REMARKS

This amendment follows the outstanding Official Action dated 07/01/04 and is intended as a complete and proper response thereto. In particular, the present paper is presented with the view of advancing prosecution of this application on its merits and hopefully placing this case in a clear condition for allowance.

In order to render this Amendment responsive, a Petition for Extension of Time to Respond Within the Third Month Pursuant to § 1.136(a) is submitted herewith in duplicate along with the requisite petition fee of $510.00 commensurate with the applicant's small entity status as previously established.

Claims 1-15 remain in the application. These remaining claims have been amended in accordance with the examiners detailed action. Reexamination and reconsideration of the application, as amended, is requested.

The abstract as originally presented has been objected to as purporting to list the merits of the invention. It is believed that the current amendment to the abstract overcomes this rejection and as such, lists a factual summary of the invention in the application.

As initially presented, Claims 1,3,6-8 and 11-13 have been rejected under 35 U.S.C. § 102(b) as being anticipated by the Fershtut U.S. Patent 6,068,425. For prior art to anticipate

under § 102, every element of the claimed invention must be identically disclosed, either expressly or under principles of inherencey, in a single reference. *Corning Glass Works v. Sumitomo Electric*, 9 U.S.P.Q. 2d 1962, 1965 (Fed. Cir.1989). The exclusion of a claimed element, no matter how insubstantial or obvious, from a prior art reference is enough to negate anticipation. *Connell v. Sears, Roebuck & Co.*, 220 U.S.P.Q. 193, 198 (Fed. Cir. 1983).

The Fershtut patent generally discloses a method and apparatus for raising concrete members. This patent details a system for pumping mud or grout and specifically lists that the mud or grout may be composed of a mixture of sand, cement and lime using 80% sand, 10% cement and 10% lime, with initial set up time of 3 to 6 hours and a curing time of 24 to 36 hours. Also, a mixture of 90% sand, 15% clay and 5% lime has been used satisfactorily. See Fershtut column 8, line 41. Further, the application goes on to detail a method of raising curb and gutter using hydraulic jacks, chains and levers and details raising the concrete first and then pumping the mud and grout under the concrete as can be seen from column 3 of Fershtut in general. No where in the Fershtut patent is there any description of pumping a dry sand with a compressed air mixture to fill in any voids as described and claimed in the current application.

The Examiner claims that Fershtut discloses mixing lime and liquid into a viscous sludge and cutting holes and pumping it under the sand. Applicant agrees that the Fershtut patent does disclose the use of pumping mud or grout through holes and slabs,

however it does not list a viscous lime sludge as now currently claimed consisting mainly of lime and liquid or water. Further, as described, Fershtut raises a slab via a system of jacks, levers and chains and then pumps the mud under. The current system as described and claimed uses the pressure from the pump system and the lime to lift the slab into place and hold it in place. Upon completion of this, a dried air/sand mixture is pumped in to fill any voids left by the viscous lime sludge mixture. These features are not disclosed in the Fershtut patent and are currently listed in the claims as amended. As such, it is believed that the 102 rejection has been rendered moot.

Claims 2, 4, 5, 9,10, 14 and 15 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Fershtut as applied above. For prior art references to be combined to render obvious a subsequent invention under § 103, there must be something in the prior art as a whole which suggests the desirability, and thus the obviousness, of making the combination. *Uniroyal v. Rudkin-Wiley*, 5 U.S.P.Q. 2d 1434, 1438(Fed. Cir. 1988). The teaching of the references can be combined only if there is some suggestion or incentive in the prior art to do so. *In re Fine*, 5 U.S.P.Q. 2d 1596, 1599(Fed. Cir. 1988). Hindsight is forbidden. It is impermissible to use the claims as a framework from which to pick and choose individual references to recreate the claimed invention. *Id.* at 1600; *W.L. Gore*, 220 U.S.P.Q. at 312. Moreover, the mere fact that a prior art structure could be modified to produce the claimed invention would not have made the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 23 U.S.P.Q. 2d

1780, 1783 (Fed. Cir. 1992); *In re Gordon*, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984).

The examiner has stated that inorganic salts are well known to use for cement and it would have been obvious to one of ordinary skill in the art to use one or more of these salts in order to obtain the desired structural characteristic. As can be seen from the current application, a low amount of lime is used in the mixture as pumped under the cement. On the other hand, the current application uses a mixture of lime and water to form a sludge. This lime is essentially pure lime normally obtained as a by-product of the water softening process as described in the application and does not contain the other normal ingredients of cement such as sand and clay. Additionally, the detailed description of the sand/air mixture has now been limited to a well dried sand and compressed air mixture so as to fill any voids around the lime sludge which has been pumped under high pressure in order to raise the cement as opposed to the Fershtut patent which details the use of hydraulic jacks, levers and chains. As such, it is believed that the current 103 rejection has been rendered moot in view of the above discussion and the claims as amended.

In light of the foregoing discussion of the applied art of record, the presentation of the amended schedule of claims and the indication as to how such claims are considered to clearly and patentably define over the references, it is believed that the patentable nature of the claims has been demonstrated.

In view of the above remarks, reconsideration and allowance of the claims is kindly requested. Should any matters remain outstanding that may be handle over the phone the examiner is encouraged to call.

Respectfully Submitted,

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